



July 6, 2000

Ms. Pamela Smith
Assistant Chief
Legal Services
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2000-2534

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 137079.

The Department of Public Safety (the "department") received a request for information related to an accident involving a named individual that occurred on a specified date.¹ You claim that the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e). The department did not, however, submit to this office a copy of the written request for information.²

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd.*

¹You state that the department will release a copy of the peace officer's accident report and the first page of the offense report.

²In your brief, you state that the department has enclosed a copy of the original request. However, the request was not submitted to this office.

of Ins., 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim that the documents submitted are excepted from disclosure under sections 552.103 and 552.108. However, sections 552.103 and 552.108 are discretionary exceptions which the department has waived through noncompliance with section 552.301. Accordingly, with the exception of the information discussed below, you must release the requested information.

The presumption of openness may be overcome if an exception designed to protect the interests of a third party is applicable. Open Records Decision No. 150 (1977). Section 552.101³ is such an exception in that it encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We have marked personal financial information that is protected under section 552.101 and common law privacy.

The fact that information is made confidential by law found outside the Act also constitutes a compelling demonstration that the information should be withheld from the public. *See* Open Records Decision No. 150 (1977). Section 159.002(b) of the Occupations Code protects from disclosure "[a] record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician." The documents you submitted to this office include medical records, access to which is governed by provisions outside the Act. Medical records may only be released as provided by chapter 159 of the Occupations Code. Open Records Decision No. 598 (1991). We have marked the documents that may be released only in accordance with chapter 159 of the Occupations Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas driver's license numbers, license plate numbers, and VIN numbers. We have marked examples of the type of information that you must withhold under section 552.130.

³Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Finally, we caution that the social security numbers contained in the submitted records may be confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii)(I); *see* Open Records Decision No. 622 (1994).

In summary, we have marked personal financial information that must be withheld under section 552.101 of the Government Code and common law privacy, medical records that may be released only in accordance with chapter 159 of the Occupations Code, and examples of Texas driver's license numbers, license plate numbers, and VIN numbers that must be withheld under section 552.130 of the Government Code. The social security numbers contained in the records may be confidential under federal law. The rest of the information must be released, pursuant to section 552.302, due to the department's failure to meet the requirements of section 552.301(e).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 137079

Encl. Submitted documents

cc: Mr. Larry Vandiver
Sandiver & Associates
P.O. Box 48
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(w/o enclosures)